

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA

vs.

JAMES SMITH

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**Case No. 00 CR 71
Judge Kennelly**

INSTRUCTIONS GIVEN BY THE COURT

Date: January 4, 2002

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that a person would have given certain testimony.

I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness' intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.”

Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give any evidence in the case.

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

It is proper for an attorney to interview any witness in preparation for trial.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The indictment in this case is the formal method of accusing the defendant of an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is charged with the offense of making, forging and counterfeiting Federal Reserve notes. The defendant has pleaded not guilty to the charge.

The defendant is presumed to be innocent of the charge. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

You have received evidence of a statement said to be made by the defendant to a law enforcement officer. You must decide whether the defendant did in fact make the statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself and the circumstances under which the statement was made.

You have heard evidence that the defendant has been convicted of a crime. You may consider this evidence only in deciding whether the defendant's testimony is truthful in whole, in part, or not at all. You may not consider it for any other purpose. A conviction of another crime is not evidence of the defendant's guilt of any crime for which the defendant is now charged.

You have heard evidence of acts of the defendant other than those charged in the indictment.

You may consider this evidence only on the question of defendant's motive or intent to commit the offense charged in the indictment. You should consider this evidence only for this limited purpose.

You have heard witnesses give opinions about matters requiring special knowledge or skill.

You should judge this testimony in the same way that you judge the testimony of any other witness.

The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications, and all of the other evidence in the case.

A statement made by a defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of that defendant's testimony in this trial.

To sustain the charge of making, forging or counterfeiting Federal Reserve notes, the government must prove the following propositions:

First, that the defendant falsely made, forged or counterfeited an obligation or other security of the United States; and

Second, that the defendant did so with the intent to defraud.

If you find from your consideration of all the evidence that both of these propositions have been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all of the evidence that either of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

I instruct you as a matter of law that a Federal Reserve note is an obligation or other security of the United States.

To act with an “intent to defraud” means to act with the intent to deceive or to cheat, ordinarily for the purpose of either causing some financial loss to another or for the purpose of bringing about some financial gain to one’s self.

The government must prove that the defendant acted with “an intent to defraud.” The government is not required to prove that the United States, or anyone else, was actually defrauded.

You may infer the defendant's intent from the surrounding circumstances. Intent may be proved by the defendant's conduct, and by all the facts and circumstances surrounding the case.

The phrase “falsely made [or] forged” means deceitfully created, signed, or changed in order to imitate or resemble something else.

The term “counterfeit” means made in order to bear such a likeness or resemblance to something genuine that it is calculated to deceive an honest, sensible, and unsuspecting person of ordinary observation and using care when dealing with a person who is presumed to be honest and upright.

The indictment charges that the offense was committed “in or about” November 1999. The government must prove that the offense happened reasonably close to that date but is not required to prove that the alleged offense happened on an exact date.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

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v.

JAMES SMITH

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) No. 00 CR 71

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) Honorable Matthew F. Kennelly

VERDICT

We, the jury, find the defendant, James Smith, NOT GUILTY as charged in the Indictment.

FOREPERSON

Date

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VERDICT

We, the jury, find the defendant, James Smith, GUILTY as charged in the Indictment.

FOREPERSON

Date